

REMARKS

The foregoing amendment is submitted to provide that the one or more partially hydrogenated vegetable oils or saturated fats are affective alone to suppress the unpleasant mouthfeel caused by the botanical. Applicants are relying on these substances as the sole unpleasant mouthfeel suppressing agent. Support for this amendment can be found throughout the specification and especially in view of the Examples beginning on page 8 wherein each of the compositions in accordance with the present invention (i.e. formulations A-L) show the partially hydrogenated vegetable oil or saturated fat to be the sole unpleasant mouthfeel suppressing agent. Entry of the amendment is therefore deemed proper and is respectfully requested.

In addition, Applicants have amended the claims to eliminate the phrase "a chemically induced" pursuant to a telephone conference with the Patent Examiner. It is respectfully submitted that because the claims incorporate a botanical and because botanicals are known to have an unpleasant mouthfeel due to poor taste, the term "chemically induced" is deemed unnecessary.

Applicants have also indicated that claims 10-27 and 46-54 have been previously withdrawn because they are directed to a non-elected invention.

In view of the foregoing, Applicants submit that the amendment to the claims, as described above, is fully supported in the application as filed and entry thereof is deemed proper and is respectfully requested.

Referring to the Office Action, it is respectfully submitted that the rejection of claims 1, 28 and 55 under 35 U.S.C. Section 112 appearing on pages 2 and 3 of the Office Action is deemed overcome in light of the amendment to these claims, and particularly, elimination of the term "chemically induced".

Applicants gratefully acknowledge withdrawal of the rejection of various claims based on Katsuragi (EP 0732064) in view of the combination of Sharma (U.S. Patent No. 4,797,288) and Oravainen (WO 9107100) alone or further in view of Raymont (AU 9671904).

A new rejection of all of the claims (except claims 3 and 30) under 35 U.S.C. Section 103 has been made of record as indicated on page 4 of the Office Action. This rejection is based on Katsuragi in view of newly cited Seang (WO 94/05260). The rejection is hereby traversed and reconsideration is respectfully requested.

The new rejection is premised on the following three arguments. First, that Katsuragi in the method of producing the ester described on page 3 inherently produces one or more partially hydrogenated vegetable oils or saturated fats and

therefore inherently employs these substances as a taste masking agent for orally ingested compositions. The second argument involves the disclosure on page 4 of Katsuragi wherein a partially hydrogenated vegetable oil or saturated fat is used as a solvent for the taste masking ester and therefore inherently employs the solvent for its taste masking properties. The third argument is that Seang teaches that lipid coatings on certain drugs have been beneficially employed to mask their bitter taste and that it would be obvious to one of ordinary skill in the art to modify Katsuragi's composition and add saturated fats or partially hydrogenated vegetable oils to the Katsuragi composition. The rejection is hereby traversed and reconsideration is respectfully requested.

The claims of the present application now require that the amount of the unpleasant mouthfeel suppressing agent (i.e. from about 0.5% to about 5.0% by weight of the composition) be sufficient by itself to effectively suppress the unpleasant mouthfeel of the botanical. In effect, Applicants' discovery is that in the context of a hard boiled candy composition, the vegetable oils or saturated fats in the stated amount avoid the need to have any other taste masking agent. Katsuragi clearly discloses a taste masking agent in the form of an ester of a glyceride and a carboxylic acid or salt thereof. This taste masking agent is taught in Katsuragi and there is no teaching that its elimination could still achieve the objects of the reference invention. In other words, there is no teaching or suggestion in Katsuragi that there is a sufficient amount of any other agent that is capable alone of suppressing the unpleasant taste associated with botanicals. Katsuragi requires the ester as a taste

masking agent and its elimination is clearly contrary to everything taught or suggested in the reference.

The first argument offered in the Office Action in support of the obviousness rejection is that in the production in the taste masking ester, partially hydrogenated vegetable oils or saturated fats may be formed. Triglycerides (fats) consist of three fatty acids (which are mono carboxylic acids) esterified to glycerol. Therefore, the reaction of mono- or di-glyceride with a poly carboxylic acid is an ester of the mono- or di- glyceride and not a triglyceride.

Nonetheless, even if an incidental amount of the partially hydrogenated vegetable oil or saturated fat were present, Katsuragi fails to teach or suggest the claimed invention which requires use of these ingredients as the sole taste masking agent. Katsuragi clearly requires an ester as the principle taste masking agent. In order to arrive at the claimed invention from Katsuragi, the taste masking ester would have to be eliminated from the composition and there would have to be an amount of the partially hydrogenated vegetable oil or saturated fat sufficient (by itself) to mask the taste of the botanical. No matter how Katsuragi is construed, one of ordinary skill in the art cannot arrive at the claimed invention starting from a reference which requires the ester as the principle taste masking agent.

The Office Action refers to the top of page 4 of Katsuragi as showing the use of Applicants' unpleasant mouthfeel suppressing agents as solvents for the

reference ester. Applicants do not dispute the teaching of Katsuragi showing various oils as solvents for the ester. However, this portion of the disclosure suffers from the same deficiencies as the disclosure on page 3 of Katsuragi. In particular, there is no statement of the amount of the oil necessary to dissolve the ester and therefore no teaching of an amount of the oil that solely can provide a taste masking effect. It is quite clear, that the oil of Katsuragi used as a solvent for the ester has no or insufficient taste masking effect.

Still further, and most importantly, there is no teaching or suggestion in this portion of Katsuragi that the ester can be eliminated from the composition and that the oil can provide the sole taste masking effect. For these reasons, the disclosure at the top of page 4 of Katsuragi fails to teach or suggest the invention as now claimed.

Applicants are aware of Seang as suggesting that a liquid coating on certain drugs can be useful to mask the bitter taste thereof. One of ordinary skill in the art attempting to modify Katsuragi by the teaching of Seang could still not arrive at the claimed invention. This is because Seang teaches a lipid coating of certain drugs and the combination with Katsuragi would still require the presence of the ester as the principle taste masking agent. There is no teaching or suggestion in the combination of these references of eliminating the Katsuragi ester because to do so would defeat the Katsuragi contribution to the art and would be clearly hindsight

reconstruction of the present invention. For these reasons, claims 1, 2, 4-9, 28, 29, 31-36 and 55 are patentable over the combination of Katsuragi and Seang.

Claims 3 and 30 stand rejected as obvious over the combination of Katsuragi in view of Seang further in view of Raymont or Emanuele-King (U.S. Patent No. 5,248,503). The rejection is hereby traversed and reconsideration is respectfully requested.

Raymont and Emanuele-King are cited as evidence of the conventionality of adding Echinacea to hard candies. Applicants respectfully submit that neither of these references teach or suggest the use of partially hydrogenated vegetable oils or saturated fats as an unpleasant mouthfeel suppressing agent in amounts solely effective to achieve the desired purpose. Accordingly, Raymont and Emanuele-King do not cure the deficiencies of the primary references as discussed above and claims 3 and 30 are therefore deemed patentable over the combination of references set forth in the Office Action.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

ARK:jsg111607/1901055.AMD-3

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen R. Kipnes", written over the typed name.

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